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10
11 Attorneys for Defendant Dex Clothing Company Co. Ltd.
12 erroneously sued as Dex Bros. Clothing Company Co. Ltd.
13 and the TJX Companies, Inc.

14
15 **UNITED STATES DISTRICT COURT**
16
17 **CENTRAL DISTRICT OF CALIFORNIA**

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20 GOLD VALUE INTERNATIONAL
21 TEXTILE, INC. a California Corporation,
22 individually and doing business as
23 "FIESTA FABRIC,"

24
25 Plaintiff,

26 vs.

27
28 WJ APPAREL GROUP, INC., a New York
Corporation, individually and doing
business as "1015Store.com"; ONE STEP
UP, LTD., a New York Corporation,
individually and doing business as "Eye
Candy"; A'GACI, LLC, a Texas Limited
Liability Company; ENTRY, INC., a
California Corporation, individually and
doing business as "Alt B" and Soon Chan
Kim"; THE TJX COMPANIES, INC. a
Delaware Corporation, individually and
doing business as "Marshalls"; ALICE IN
WONDERLAND FROCKS, INC., a
Massachusetts Corporation; MODNIQUE,
INC., a Delaware Corporation; DEX
BROS. CLOTHING CO. LTD, a Canadian

Case No. 2:15-cv-00201-FMO-RX PLAx

[PROPOSED] PROTECTIVE ORDER

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1 Limited Company; LASRY PAUL, a
2 California business entity of form unknown
3 and DOES 1 through 10,

4 Defendants.

5 Complaint Filed: January 9, 2015
6 Trial Date: None Set

7
8 On stipulation of the Parties, the Court enters a Protective Order in this matter as
9 follows:

10
11 1. PURPOSES AND LIMITATIONS

12 Disclosure and discovery activity in this action are likely to involve production of
13 confidential, proprietary, or private information for which special protection from
14 public disclosure and from use for any purpose other than prosecuting this matter would
15 be warranted, including specifically information regarding customer pricing, sourcing,
16 and non-public financial data. Accordingly, the parties have stipulated to and petitioned
17 this Court to enter the following Stipulated Protective Order. The parties acknowledge
18 that this Order does not confer blanket protections on all disclosures or responses to
19 discovery and that the protection it affords extends only to the limited information or
20 items that are entitled under the applicable legal principles to treatment as confidential.
21 The parties have agreed that the terms of this Protective Order shall also apply to any
22 future voluntary disclosures of confidential, proprietary, or private information. The
23 parties reserve their rights to object to or withhold any information, including
24 confidential, proprietary, or private information, on any other applicable grounds
25 permitted by law, including third-party rights and relevancy.

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1 2. DEFINITIONS

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information,
5 regardless of the medium or manner generated, stored, or maintained (including, among
6 other things, testimony, transcripts, or tangible things), that are produced or generated in
7 disclosures or responses to discovery in this matter.

8 2.3 “Confidential” Information or Items: All information in whatever
9 form, such as oral, written, documentary, tangible, intangible, electronic, or digitized
10 now or hereafter in existence that:

11 a) derives independent economic value, actual or potential, from not
12 being generally known to, and not being readily ascertainable by proper means, by other
13 persons who can obtain economic value from its disclosure or use;

14 b) is the subject of efforts that are reasonable under the
15 circumstances to maintain its secrecy; and

16 c) is otherwise regarded by a party as being confidential, private, or
17 proprietary in nature.

18 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
19 material that the disclosing party has a reasonable belief that the information disclosed,
20 if known to one or more parties in the case would have a reasonable chance of putting
21 the disclosing party to a competitive disadvantage or otherwise result in the disclosure
22 of sensitive proprietary information that could cause future harm. Notwithstanding the
23 terms of this agreement, Plaintiff’s attorney is entitled to disclose to Plaintiff the total
24 revenue and gross profit data disclosed in this action, as well as the names of any parties
25 responsible for distributing the infringing product at issue, or any components of said
26 product.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or
2 Discovery Material in this action.

3 2.7 Designating Party: a Party or non-party that designates information
4 or items that it produces in disclosures or in responses to discovery as
5 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

6 2.8 Protected Material: any Disclosure or Discovery Material that is
7 designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

8 2.9 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
10 as an expert witness or as a consultant in this action. This definition includes a
11 professional jury or trial consultant retained in connection with this litigation. The
12 expert witness or consultant may not be a past or a current employee of the Party
13 (including any affiliates or related entities) adverse to the Party engaging the expert
14 witness or consultant, or someone who at the time of retention is anticipated to become
15 an employee of the Party (including any affiliates or related entities) adverse to the
16 Party engaging the expert witness or consultant.

17 2.10 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
19 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.) and
20 their employees and subcontractors.

21
22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also any information copied or extracted therefrom, as
25 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
26 conversations, or presentations by parties or counsel to or in litigation or in other
27 settings that might reveal Protected Material.

1 4. DURATION

2 Even after the termination of this action, the confidentiality obligations imposed
 3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
 4 or a court order otherwise directs.

5 The Parties acknowledge that once a case proceeds to trial, all of the court-filed
 6 information that is to be introduced and was previously designated as confidential
 7 and/or kept and maintained pursuant to the terms of a protective order becomes public
 8 and will be presumptively available to all members of the public, including the press,
 9 unless compelling reasons supported by specific factual findings to proceed otherwise
 10 are made to the district judge in advance of the trial.

11
 12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for
 14 Protection. Each Party or non-party that designates information or items for protection
 15 under this Order must take care to limit any such designation to specific material that
 16 qualifies under the appropriate standards. A Designating Party must take care to
 17 designate for protection only those parts of material, documents, items, or oral or
 18 written communications that qualify – so that other portions of the material, documents,
 19 items, or communications for which protection is not warranted are not swept
 20 unjustifiably within the ambit of this Order.

21
 22 5.2 Manner and Timing of Designations. Except as otherwise provided
 23 in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
 24 stipulated or ordered, material that qualifies for protection under this Order must be
 25 clearly so designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts
 28 of depositions or other pretrial or trial proceedings), that the Producing Party affix the

1 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or bottom of
2 each page that contains protected material.

3 A Party or non-party that makes originals or copies of documents or
4 materials available for inspection need not designate them for protection until after the
5 inspecting Party has indicated which material it intends to copy. During the inspection
6 and before the designation, all of the material made available for inspection shall be
7 deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must designate, either in
9 writing or on the record (at a deposition), which documents, or portions thereof, qualify
10 for protection under this Order. Then the Receiving Party must affix the
11 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend at the top of each
12 copied page that contains Protected Material. If only a portion or portions of the
13 material on a page qualifies for protection, the Producing Party also must clearly
14 identify the protected portion(s) (e.g., by making appropriate markings in the margins)
15 and must specify, for each portion, the level of protection being asserted (either
16 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY").

17 (b) for testimony given in deposition or in other pretrial or trial
18 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
19 the record, before the close of the deposition, hearing, or other proceeding, all protected
20 testimony, and further specify any portions of the testimony that qualify as
21 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." When it is impractical to
22 identify separately each portion of testimony that is entitled to protection, and when it
23 appears that substantial portions of the testimony may qualify for protection, the Party
24 or non-party that sponsors, offers, or gives the testimony may invoke on the record
25 (before the deposition or proceeding is concluded) a right to have up to 20 days to
26 identify the specific portions of the testimony as to which protection is sought and to
27 specify the level of protection being asserted ("CONFIDENTIAL" or "ATTORNEYS'
28 EYES ONLY"). Only those portions of the testimony that are appropriately designated

1 for protection within the 20 days shall be covered by the provisions of this Stipulated
 2 Protective Order.

3 Transcript pages containing Protected Material must be separately
 4 bound by the court reporter, who must affix to the top of each such page the legend
 5 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or
 6 non-party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than
 8 documentary, and for any other tangible items, that the Producing Party affix in a
 9 prominent place on the exterior of the container or containers in which the information
 10 or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If
 11 only portions of the information or item warrant protection, the Producing Party, to the
 12 extent practicable, shall identify the protected portions, specifying whether they qualify
 13 as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

14 5.3 Inadvertent Failures to Designate. If timely corrected, an
 15 inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or
 16 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
 17 Party’s right to secure protection under this Order for such material. If material is
 18 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
 19 after the material was initially produced, the Receiving Party, on timely notification of
 20 the designation, must make reasonable efforts to assure that the material is treated in
 21 accordance with the provisions of this Order.

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23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
 25 Party’s confidentiality designation is necessary to avoid foreseeable substantial
 26 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
 27 the litigation, a Party does not waive its right to challenge a confidentiality designation
 28 by electing not to mount a challenge promptly after the original designation is disclosed.

1 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
 2 Designating Party's confidentiality designation must do so in good faith and must begin
 3 the process by conferring with counsel for the Designating Party in writing. In
 4 conferring, the challenging Party must explain the basis for its belief that the
 5 confidentiality designation was not proper and must give the Designating Party an
 6 opportunity to review the designated material, to reconsider the circumstances, and, if
 7 no change in designation is offered, to explain the basis for the chosen designation. A
 8 challenging Party may proceed to the next stage of the challenge process only if it has
 9 engaged in this meet-and-confer process first.

10 6.3 Court Intervention. A Party that elects to press a challenge to a
 11 confidentiality designation after considering the justification offered by the Designating
 12 Party may file and serve a motion that identifies the challenged material and sets forth
 13 in detail the basis for the challenge. Any motion challenging a confidentiality
 14 designation must be made using the procedures set forth in Local Rule 37.

15 Until the Court rules on the challenge, all parties shall continue to afford
 16 the material in question the level of protection to which it is entitled under the
 17 Producing Party's designation.

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19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that
 21 is disclosed or produced by another Party or by a non-party in connection with this case
 22 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 23 Material may be disclosed only to the categories of persons and under the conditions
 24 described in this Order. When the litigation has been terminated, a Receiving Party
 25 must comply with the provisions of section 11, below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
 27 location and in a secure manner that ensures that access is limited to the persons
 28 authorized under this Order.

1 The parties agree that in order to make decisions regarding settlement,
 2 Plaintiff may require access to the following information: (1) the identities of any
 3 persons not named in the complaint who are known to Defendants to have sold the
 4 items at issue in the case, (2) Defendants' gross revenues, (3) Defendants' profits, (4)
 5 fabric yields, and (5) information regarding production fabrication. The parties agree
 6 that, notwithstanding the inclusion of such information in a document marked
 7 "ATTORNEY'S EYES ONLY," Plaintiff's counsel may orally communicate to
 8 Plaintiff's president (1) the identity of any person who sold the items at issue in this
 9 case, (2) the amount of Defendants' total gross revenues for sale of the items at issue in
 10 this case, (3) the amount of Defendants' gross profits for sale of the items at issue in this
 11 case, (4) the amount of Defendants' net profits for sale of the items at issue in this case,
 12 (5) fabric yields, and (6) the identity of any person who produced the fabric at issue in
 13 this case, provided that Plaintiff's counsel advises Plaintiff's president that the
 14 information is confidential and subject to this protective order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 16 otherwise ordered by the Court or permitted in writing by the Designating Party, a
 17 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
 18 only to:

19 (a) the Receiving Party's outside counsel, as well as employees of
 20 said outside counsel to whom it is reasonably necessary to disclose the information for
 21 this litigation;

22 (b) Board members, officers and directors of the Receiving Party;

23 (c) Other employees of the Receiving Party to whom disclosure is
 24 reasonably necessary for this litigation and who are bound by internal confidentiality
 25 obligations as part of their employment or who have signed the "Acknowledgment and
 26 Agreement to Be Bound" (Exhibit A);

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(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) the Court personnel assigned to this litigation;

(f) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(h) the author of the document or the original source of the information.

7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's outside counsel, as well as employees of said outside counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court personnel assigned to this litigation;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Discovery Material, the Receiving Party must so notify the Designating Party, in writing immediately and in no event more than five business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve

1 all copies of the Protected Material, (c) inform the person or persons to whom
 2 unauthorized disclosures were made of all the terms of this Order, and (d) request such
 3 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that
 4 is attached hereto as Exhibit A.

5

6 **10. FILING PROTECTED MATERIAL**

7 Without written permission from the Designating Party, or a court order secured
 8 after appropriate notice to all interested persons and after following the procedures
 9 provided for in Local Rule 79-5.1, a Party may not file in the public record in this action
 10 any Protected Material. If material designated as confidential is included in any papers
 11 to be filed in Court, such papers shall be accompanied by an application to file the
 12 papers—or the confidential portion thereof—under seal; the application must show
 13 good cause for the under seal filing. The application shall be directed to the judge to
 14 whom the papers are directed. Pending the ruling on the application, the papers or
 15 portions thereof subject to the sealing application shall be lodged under seal.

16

17 **11. FINAL DISPOSITION**

18 Unless otherwise ordered or agreed to in writing by the Producing Party, within
 19 60 days after the final termination of this action, each Receiving Party must return all
 20 Protected Material to the Producing Party or destroy the Protected Material. As used in
 21 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
 22 summaries or any other form of reproducing or capturing any of the Protected Material.
 23 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
 24 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
 25 work product, even if such materials contain Protected Material. Any such archival
 26 copies that contain or constitute Protected Material remain subject to this Protective
 27 Order as set forth in Section 4 (DURATION), above.

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12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of
any person to seek its modification in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this
Protective Order no Party waives any right it otherwise would have to object to
disclosing or producing any information or item on any ground not addressed in this
Stipulated Protective Order. Similarly, no Party waives any right to object on any
ground to use in evidence of any of the material covered by this Protective Order.

12.3 Inadvertent Production of Privileged Documents. If a Party, through
inadvertence, produces any document or information that it believes is immune from
discovery pursuant to an attorney-client privilege, the work product privilege, or any
other privilege, such production shall not be deemed a waiver of any privilege, and the
Producing Party may give written notice to the Receiving Party that the document or
information produced is deemed privileged and that return of the document or
information is requested. Upon receipt of such notice, the Receiving Party shall
immediately gather the original and all copies of the document or information of which
the Receiving Party is aware, in addition to any abstracts, summaries, or descriptions
thereof, and shall immediately return the original and all such copies to the Producing
Party. Nothing stated herein shall preclude a Party from challenging an assertion by the
other Party of privilege or confidentiality.

12.4 Exception for Public Information. Nothing in this Stipulation shall
be deemed in any way to restrict the use of documents or information which are
lawfully obtained or publicly available to a party independently of discovery in this
action, whether or not the same material has been obtained during the course of
discovery in the action and whether or not such documents or information have been
designated hereunder. However, in the event of a dispute regarding such independent
acquisition, a party wishing to use any independently acquired documents or
information shall bear the burden of proving independent acquisition.

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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Dated: July 30, 2015

By: 

5 Honorable ~~Ralph Zarefsky~~ Paul L. Abrams
6 U.S. Magistrate Judge
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3

4 I, _____ [print full name],
5 of _____ [print full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California in the case of *Gold Value International Textile, Inc. v. WJ*
9 *Apparel Group, Inc.*, Case No. 15-CV-00201 FMO (RZ). I agree to comply with and to
10 be bound by all of the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or
14 entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print full name]
20 of _____ [print full address and
21 telephone number] as my California agent for service of process in connection with this
22 action or any proceedings related to enforcement of this Stipulated Protective Order.

23

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____